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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

BORIS NASIBIAN,

Plaintiff and Appellant,

v.

HOUSING AUTHORITY OF THE CITY OF  
LOS ANGELES,

Defendant and Respondent.

B263728

(Los Angeles County  
Super. Ct. No. BS149275

APPEAL from a judgment of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed.

John M. Levant for Plaintiff and Appellant.

Joseph L. Stark & Associates, Joseph L. Stark for Defendant and Respondent.

## **INTRODUCTION**

Boris Nasibian appeals from a judgment denying his writ petition filed in the superior court. Nasibian<sup>1</sup> argues that the Housing Authority of the City of Los Angeles (HACLA) improperly terminated his section 8 housing benefits after finding that multiple unauthorized people lived in the rental unit for which Nasibian received housing assistance. Nasibian was authorized to rent a two-bedroom unit, with one bedroom for himself and one bedroom for his adult daughter Armenuhi Nasibian, who was his authorized in-home services provider. When inspectors investigated the property, they found that Armenuhi maintained a separate address, but women's and children's clothing and personal belongings indicated that additional unauthorized tenants lived in the unit. Nasibian's ex-wife and adult son were also at the unit and appeared to be living there. Further investigation revealed that Nasibian's daughter, Nara Katrdzhyan, owned the unit, which is against section 8 rules.

Following a hearing, a HACLA hearing officer found that Nasibian failed to provide accurate information to HACLA, and that unauthorized tenants were living in the unit. Nasibian's section 8 housing benefits were terminated. Nasibian filed a petition for a writ of mandate in the superior court, and the court affirmed the hearing officer's ruling. Nasibian appealed, and we affirm. Substantial evidence supports the trial court's findings that Nasibian's daughter owned the unit in violation of section 8 rules, and that multiple unauthorized tenants were living in the unit.

## **BACKGROUND**

### **A. Section 8**

This case arises in the context of the section 8 federal housing assistance program. "The federal government provides rental assistance for low and moderate income families, the elderly, and the disabled through what is known as 'the section 8 program.' Congress added the section 8 program to the United States Housing Act of 1937 in 1974

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<sup>1</sup>Because there are multiple relevant people with the last names Nasibian and Katrdzhyan, we will refer to Boris Nasibian as Nasibian, and the non-party family members by their first names. We intend no disrespect.

by enacting the Housing and Community Development Act of 1974, Pub.L. No. 93–383, § 201(a), 88 Stat. 633, 662–66 (1974) (codified as amended at 42 U.S.C. § 1437f). The express congressional ‘purpose’ of the section 8 program is ‘aiding low-income families in obtaining a decent place to live and . . . promoting economically mixed housing.’ 42 U.S.C. § 1437f(a). The program is managed federally by [U.S. Department of Housing and Urban Development (‘HUD’)], and administered locally by public housing authorities (‘PHA’). Section 8 tenants must sign a lease and pay a portion of their income toward rent. The remainder of the rent charge is paid by PHA pursuant to a housing assistance payment (‘HAP’) contract between PHA and the owner . . . . [*Id.*, § 1437f(o)(7).]” (*Barrientos v. 1801-1825 Morton LLC* (9th Cir. 2009) 583 F.3d 1197, 1202.)

Section 8 tenants are referred to as participant “families” in the relevant code sections. A participating family “must supply any information that the PHA or HUD determines is necessary in the administration of the program.” (24 C.F.R. § 982.551(b)(1).) “Any information supplied by the family must be true and complete.” (*Id.*, § 982.551(b)(4).) “The composition of the family must be approved by the PHA. The family must promptly inform the PHA of the birth . . . of a child. The family must request PHA approval to add any other family member as an occupant of the unit. No other person [i.e., nobody but members of the assisted family] may reside in the unit.” (*Id.*, § 982.551(h)(2) (brackets in original).) “The members of the family must not commit fraud, bribery or any other corrupt or criminal act in connection with the programs.” (*Id.*, § 982.551(k).)

If a family violates any of these requirements, section 8 benefits may be terminated. (24 C.F.R. § 982.552(c)(1)(i).) In determining whether to terminate assistance, “[t]he PHA may consider all relevant circumstances such as . . . mitigating circumstances related to the disability of a family member.” (*Id.*, § 982.552(c)(2)(i).) In addition, “[i]f the family includes a person with disabilities, the PHA decision concerning such action is subject to consideration of reasonable accommodation . . . .” (*Id.*, § 982.552(c)(2)(iv).)

Local PHAs, such as HACLA, are required to “adopt a written administrative plan that establishes local policies for administration of the program in accordance with HUD requirements.” (24 C.F.R. § 982.54.) Portions of HACLA’s section 8 Administrative Plan are included in the administrative record on appeal. Section 12.3.3 states, “A person must not be added to the family composition without the written approval of the landlord and the HACLA.” In addition, HACLA may “deny or terminate housing assistance to any participant family who fails to meet any of the family obligations or family responsibilities specified in 24 CFR for the applicable assisted housing program.” (HACLA Admin. Plan, § 13.8.5.)

The section 8 program also bars unit owners from renting to tenants who are related to them, except under particular circumstances. “The PHA must not approve a unit if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.” (24 C.F.R. § 982.306(d).)

## **B. The investigation**

Nasibian qualified for section 8 housing assistance in April 2006. The documentation relating to his approval for section 8 housing is not included in the record. Because Nasibian was authorized to receive the services of a live-in caregiver, he qualified for financial assistance for two-bedroom living quarters. His daughter, Armenuhi, was authorized as his in-home supportive services provider. In September 2006, Nasibian moved to the residence that is at issue in this case, 7836 Lemp Avenue in North Hollywood (the Lemp Avenue residence).

In June 2012, a HACLA section 8 advisor received a postal notice indicating that additional people were living at the Lemp Avenue residence. In mid-to late 2012,<sup>2</sup>

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<sup>2</sup>The actual date of the inspection is unclear. HACLA’s investigative report has a “referral date” of June 29, 2012, and states that on that date an advisor requested a field call to the home. The report indicates the “assigned date” was November 1, 2012. A box

inspectors went to the Lemp Avenue residence to investigate. They found evidence of multiple additional people living in the house. Three beds were in Nasibian's bedroom, including a toddler bed. Women's and children's clothes and shoes were in the closets and in storage areas around the house. Personal care items for multiple people were found in the bathroom, including multiple adult toothbrushes, multiple children's toothbrushes, children's shampoo, children's bath toys, a child's bathrobe, multiple potty training seats, and hair grooming tools. In the kitchen, investigators found children's cups, baby bottles, a child's chair, a high chair, and children's artwork on the refrigerator. In the outdoor areas surrounding the house, investigators found children's toys, a car seat, wagons, toy vehicles, children's bikes, pool toys, and an above-ground swimming pool.

Investigators found Seda Nasibian, whom Nasibian identified as his wife, hiding in a closet inside the house. Seda's California driver's license listed Nara's Oakwood Street residence as her home address. There was evidence that additional people were living in the detached garage that had been converted to a guest house; investigators noted in their report that "Karapet Nasibian and his family were living in the unauthorized residence." Karapet is Nasibian's son.

HACLA investigators also found that the house belonged to Nasibian's daughter, Nara. When Nasibian moved into the house in September 2006, it was owned by a woman named Hasmik Balyan. Balyan then purportedly gave the house as a gift to Nara in April 2007. As noted above, it is illegal for a section 8 tenant to live in a residence owned by a family member, unless it would "provide reasonable accommodation for a family member who is a person with disabilities." (24 C.F.R. § 982.306(d).)

HACLA investigators recommended that Nasibian's section 8 assistance be terminated due to "Tenant/Owner conspiracy, fraud, for failing to report unauthorized tenants and [s]ubleasing of a second residence on the property."

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identified as "date," which appears to be the date of the report itself, is filled in with the date of December 12, 2012. The date near the signature line is December 14, 2012.

### **C. The Hearing**

HACLA charged Nasibian with fraud, landlord/tenant conspiracy, and “unauthorized tenants Seda Nasibian, toddler, son.” HACLA charged Nasibian with the amount of unauthorized benefit payments made since 2006, estimated to be \$80,924. HACLA requested an informal hearing.

A portion of the hearing was held on March 19, 2013. After Nasibian requested a continuance to gather evidence, the hearing was recessed, resuming again on June 27, 2013. Nasibian was represented by a non-attorney advocate at both portions of the hearing. Nara, the owner of the Lemp Avenue residence, did not appear at any stage of the proceedings.

At the March 19 portion of the hearing, HACLA presented evidence that multiple people were living at the Lemp Avenue residence. HACLA paralegal Stephen McWright, who was present at the inspection, testified about what the investigative team found during the inspection, including multiple beds in Nasibian’s room, Seda hiding in the closet, women’s and children’s clothes and shoes throughout the house, and Karapet and his family living in the converted garage. McWright submitted 72 photos taken during the inspection, showing the living conditions in and around the house.

McWright also testified that reports from Accurint, a public information database, showed that Karapet had been associated with the Lemp Avenue address from August 2009 to July 2012.<sup>3</sup> In addition, McWright testified that Accurint reports showed that the Oakwood Street residence was the likely current address for Nara, Armenuhi, and Seda; both Nara and Armenuhi were also associated with the Lemp Avenue residence.

At the hearing, Nasibian testified through an interpreter. He first asked who saw his “wife” in the closet, arguing that she was actually sitting on the couch watching television.<sup>4</sup> He then said, through the interpreter, that Seda was his ex-wife: “He is not

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<sup>3</sup>Multiple addresses show up on Karapet’s Accurint report for the same time period, none of which match up with the rental agreement Nasibian later produced showing that Karapet had lived at the Oakwood Street residence since 2009.

<sup>4</sup>An investigator’s photograph shows Seda in a bedroom, but not in a closet.

sure if the divorce is finalized on paper but they have not been living together for over 10, 15 years.” He said Seda lived in North Hollywood with Armenuhi, Armenuhi’s husband, and their two children, who were about three and four years old. Nasibian also said that the back unit was a permitted guest house, and “I have nothing to do with the back house.” When the hearing officer asked where Karapet lives, Nasibian responded that Karapet lives in Glendale, but he had stayed overnight in the guest house the night before the inspectors came because he was helping the landlord with some flooring and the work had run late.

Nasibian also said that Nara lived in Pasadena. He admitted that Nara was his daughter, and that he never reported to HACLA that his daughter owned the Lemp Avenue residence because he did not know that was not allowed: “I didn’t know that I’m not allowed to rent – rent my child’s house.” He added, “[T]he fact that this house has been under my daughter’s name has only been in the past two years, and not the past seven – seven years.” (The deed transfer is dated April 20, 2007, so at the time of the March 19, 2013 hearing, the house had been in Nara’s name for nearly seven years.) When asked for details, Nasibian said he had a “memory condition” that limited his ability to remember the past.

Nasibian’s representative pointed out that Armenuhi had a right to be there, because she was authorized as Nasibian’s live-in caregiver. The hearing officer noted that HACLA was not challenging Armenuhi as an unauthorized tenant. Nasibian’s representative explained that Armenuhi’s children’s belongings were around the house because the children were with Armenuhi when she cared for Nasibian, and she did not want to take things back and forth to her house all the time.

Nasibian’s representative asked for a continuance to gather evidence in support of his defense. The hearing officer granted the request. The hearing officer asked HACLA to provide proof of ownership of the house, and she asked Nasibian to provide proof of residence for Seda, Armenuhi, and Karapet, and proof of his divorce from Seda. Nasibian’s representative submitted a letter and additional documentation the following week. In the letter, Nasibian disagreed with the HACLA investigative report’s statement

that when Nasibian answered the door he was “confrontational at first.” The letter explained that Nasibian had been “diagnosed with Schizophrenia (DSM IV-295.34) with a history of hallucinations and persecutory delusions. He had psychotic breaks, hospitalized [*sic*], etc.” Nasibian submitted documents in support of this claim, including a doctor’s letter dated December 12, 1998, stating that Nasibian “is not able to function on his own” and that he needs “constant supervision and care.” A letter from another doctor, dated May 11, 2005, said that Nasibian “has been having a severe mental problems [*sic*] due to his persecutory delusions, audio visual [*sic*] hallucinations[.]” This letter also said that “[a]ny changes of his residence may be detrimental for him because he is familiar to [*sic*] his surroundings and gets paranoid when the changes occur.” A third doctor’s letter, dated February 6, 2012, stated that Nasibian was suffering from a number of medical problems, and had a “recent history (02/06/13)” of a colon resection. It appears the dates in the third letter are erroneous, as the recent history post-dates the date of the letter.

Nasibian presented his housing eligibility questionnaire from June 2007, in which he said that English was his primary language and he had a 12th grade education. Armenuhi was listed as Nasibian’s “provider,” and it stated that she lived in the unit with Nasibian “sometimes.” Nasibian also submitted his housing voucher, signed by Nasibian, which stated that the recipient “must not . . . [r]eceive housing choice voucher assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother . . . unless the PHA has determined (and has notified the owner and the [recipient] of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities.” Nasibian also submitted Nara’s signed housing assistance payment contract, in which Nara agreed that “[t]he owner [of the unit] is not the parent, child, grandparent, grandchild, sister, or brother of any member of the family” receiving section 8 benefits.

Nasibian submitted proof of residence for Seda, Armenuhi, and Karapet. Nasibian submitted a lease agreement, dated January 1, 2009, showing that Karapet was leasing



some portion of Nara's Oakwood Street residence for \$250. He submitted another lease agreement between Nara and Seda, dated February 1, 2008, indicating that Seda was also leasing part of the Oakwood Street residence for \$500. Nasibian argued that Seda could not be considered an unauthorized tenant at the Lemp Avenue residence, because her driver's license showed the Oakwood Street address. He also submitted a copy of Armenuhi's driver's license, which showed the Oakwood Street address. Nasibian submitted a lease agreement showing that Seda and Armenuhi rented an apartment in North Hollywood together beginning on February 1, 2013, which post-dates the inspection.

Nasibian also asserted in his letter that the children's things at his house were there because Armenuhi came to care for him during the day and sometimes brought the children with her. The beds were also there because sometimes Armenuhi would stay overnight, and the children would be with her.

Nasibian argued that he was not guilty of fraud because when he moved into the Lemp Avenue residence in September 2006 it was owned by Balyan, and Balyan later sold the property to Nara. Nasibian submitted a copy of a grant deed and a printout from a website purporting to show transfer of the title to the house, which indicated that Balyan gave the house to Nara in April 2007 for free. The printout also indicated that Gevorg Katrdzhyan, Nara's husband, transferred a partial interest in the property to Nara on April 17—three days before Balyan transferred her interest in the house to Nara. Whether Gevorg, Nasibian's son-in-law, had an interest in the Lemp Avenue residence when Nasibian moved there in 2006 is unclear.

Nasibian also submitted a divorce decree in Armenian, with a certified English translation, indicating that Nasibian and Seda were divorced in Armenia in 1992. The English translation was notarized in 1994.

HACLA responded to Nasibian's letter in a written brief, pointing out that the extra beds, Seda's presence, and the women's and children's clothes discovered in the investigation were ample evidence that other people were living in the Lemp Avenue residence. HACLA also argued the rental agreement between Karapet and Nara was

insufficient evidence to show that Karapet did not live at the Lemp Avenue residence, because Nasibian did not submit any cancelled rent checks, utility statements, or any other evidence of Karapet's residence. HACLA also noted that Nasibian admitted that Nara owned the Lemp Avenue residence, which was a violation of Nara's housing authority contract as the unit owner.

The parties attended the second phase of the hearing on June 27, 2013 before the same hearing officer. Nasibian was accompanied by the interpreter and his representative. Nasibian's representative presented oral arguments that largely tracked Nasibian's letter. HACLA representatives questioned the veracity of the physician letters, since two of the three were from several years before the hearing, and none was notarized or signed under penalty of perjury.

McWright, the HACLA paralegal, questioned Nasibian about his section 8 applications: "[O]n his application it said, are you – have any disability? Do you or any household member need accommodation because of a disability? [¶] And time and time again you marked, uh, no. Is there a reason for that?" The hearing officer stopped McWright and asked, "Is . . . the issue of a request for reasonable accommodation on the table?" McWright responded, "Well only . . . insofar as if he suffers from what he suffers then it's not consistent that he didn't request anything." The hearing officer responded, "Well, I mean, are you inviting an invitation for request for reasonable accommodation?" When McWright said no, the hearing officer responded, "Then I'd like to move forward."

McWright also asked Nasibian if he understood English. Nasibian responded, "About 20 percent." McWright pointed out that Nasibian put on his 2007 housing application that English was his first language.

The hearing officer issued a letter decision on March 17, 2014. She found that "[t]he Housing Authority submitted substantial evidence which proved unauthorized person(s) reside at the assisted unit." The hearing officer cited the evidence in support of this conclusion: "Investigative findings include photographs of items and personal effects that suggest other adults and children reside in the unit, as well as public records, i.e. Accurant reports, and the CA Identification Card for Seda Nasibian showing the

assisted unit as her resident address.”<sup>5</sup> The hearing officer also held that “undisputed records established that the current Section 8 Vendor, is [Nasibian’s] daughter which constitutes a separate violation of HACLA policy.” The hearing officer concluded, “The failure to provide true and complete information regarding occupants of the assisted unit constitutes fraud and resulted in a HAP retro charge in the amount \$78,776.00 for the period November 2006 through February 1, 2013.” The court noted that HACLA could update the amount to reflect current losses. Two days later, HACLA sent a letter informing Nasibian that he and Nara were jointly and severally liable for \$95,054, the updated amount through April 2014.

#### **D. Superior court review**

Nasibian filed a “Petition for Alternative Writ of Mandate” in the Superior Court on June 13, 2014. In his initial petition, Nasibian asserted three arguments: (1) HACLA was incorrect that “the petitioner was confrontational and that the petitioner admitted that Seda Nasibian resides with him”; (2) “HACLA’s conclusion that Seda Nasibian is an unauthorized tenant is not supported by the evidence”; and (3) “The conclusion of the Housing Authority that Karapet Nasibian is an unauthorized tenant living in an unattached second residence is not supported by the evidence.”

In an amended petition filed September 5, 2014, Nasibian added new allegations. In his statement of facts, Nasibian said that Nara helped provide him with care. He argued that HACLA was aware of his disability because Nasibian was authorized to live with an in-home services provider. However, Nasibian “was never advised of his right to apply for an exemption to the prohibition against assignment of the unit to close relatives.” The petition also alleges that Nasibian contacted HACLA on May 26, 2011 “to inquire specifically about the propriety of renting from a close relative, and was told that this was not acceptable.” “The failure of the agency to advise the Petitioner of his right to apply for the disability exemption when it had knowledge of the petitioner’s disabilities is contrary to Federal and State laws requiring non-discrimination in housing,

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<sup>5</sup>As noted above, this is incorrect. Copies of Seda’s driver’s license are in the file, which show the Oakwood Street address as her residence, not the Lemp Avenue address.

especially the laws requiring reasonable accommodations to persons with disabilities.” Based on these allegations, Nasibian asserted two new arguments (styled as causes of action): that HACLA failed to provide reasonable accommodation, and “[t]he Petitioner timely requested reasonable accom[m]odations from the agency.”

The parties filed briefs in the court and proceeded to a hearing. The court issued a tentative ruling before the hearing. In it, the court noted that a subsidy for section 8 housing is a property interest entitled to due process protections, citing *Goldberg v. Kelly* (1970) 397 U.S. 254. The court noted that Nasibian qualified to live in a two-bedroom home with Armenuhi as his caregiver. After Nara acquired the Lemp Avenue residence, “she signed a modification to the existing Section 8 payment contract for the property,” in which she “represented under penalty of perjury that she was not Petitioner’s ‘parent, child, grandparent, grandchild, sister or brother.’” The court also acknowledged that “Petitioner’s voucher informed him that the owner of his unit could not be his close relative, including his child, unless HACLA has determined that such a relationship between the unit owner and Petitioner is necessary to provide a reasonable accommodation, and has so notified the owner and Petitioner.” The court observed that “Petitioner signed an annual questionnaire asking whether he had a disability and whether he or a family member needed accommodation because of disability. Petitioner answered: ‘No.’” The court stated that it considered the additional evidence HACLA and Nasibian presented at the hearing, including the investigation photographs, Nasibian’s evidence of his medical and psychological issues, Nasibian’s explanation that Armenuhi and her children would sometimes stay with him while Armenuhi was caring for him, and the rental agreements showing that Seda, Armenuhi, and Karapet had other residences.

The court ruled that because Nasibian had exceeded the allowed page limitation for his briefs, the court would not consider the excess pages: “Petitioner’s 28-page opening brief and 12-page reply brief (exclusive of tables) grossly exceed [*sic*] the respective 15 and 10 page limits of CRC 3.1113(d). The violation is compounded by the fact that the court expressly ordered Petitioner’s counsel to comply with these page limits

at the October 2, 2014 trial setting conference, and Petitioner's counsel acknowledged this duty. As a result, the court has exercised its discretion to read and consider only the first 15 pages of the opening brief and the first 10 pages of the reply." The court held, "Petitioner's failure to meet page limit requirements means that his claim fails as a matter of law. The only arguments in Petitioner's opening brief which the court read and considered concern (1) whether the photographs constitute substantial evidence of an unauthorized person living at 7836 Lemp, and (2) whether Seda's California I.D. card and Accurant report show her living at 2219 Oakwood Street. . . . All other arguments were waived." The court held that these two arguments were insufficient to meet Nasibian's burden to show that the hearing officer's decision was not supported by substantial evidence, and the petition was denied on that basis.

The court then considered Nasibian's additional contentions *arguendo*. It stated that the toys and personal belongings in the residence indicated that the children lived there, and did not just occasionally stay for the convenience of Armenuhi. The court concluded that the women's clothing at the residence and Seda hiding in the closet indicated that Seda was living there as well. The court erroneously noted that Seda's identification card listed the Lemp Avenue address, but in fact it listed the Oakwood Street address. The court also determined that the rental agreements showing that Nara rented rooms to Seda, Armenuhi, and Karapet "are suspect." The court noted that Nara already had committed perjury by stating that the section 8 recipient was not related to her, and as a result for many years she had collected money she was not entitled to receive. "This was fraud, and there is little reason to credit leases signed by Nara, a conspirator in the fraud, purporting to show that her relatives lease 2219 Oakwood."

It was uncontested that Nara owned the Lemp Avenue residence, and the trial court held that 24 C.F.R. section 982.551(j) "forbids a Section 8 tenant from having a family member hold an interest in the unit." The court continued, "Petitioner violated this obligation, and his participation in the Section 8 program may be properly terminated on this basis alone."

The trial court rejected Nasibian's argument that the hearing officer failed to consider his disability as a mitigating factor. The court observed, "Petitioner relies on three doctors' letters to show that he is disabled, two of which are grossly out of date." The court held that even if the letters were evidence that Nasibian was disabled, they did not support his argument that HACLA should have provided a reasonable accommodation relating to the Lemp Avenue residence. "Assuming the letters are sufficient to show Petitioner's disability, they bear on the live-in presence of Armenuhi and possibly her children, but they have nothing to do with Petitioner's violations. . . . Petitioner failed to present evidence, and does not explain, how renting from his daughter would be a necessary accommodation for his disability."

Counsel for the parties reviewed the tentative ruling before the hearing. At the hearing, Nasibian's counsel argued that Nasibian presented evidence of his disability at the HACLA hearing, but he argued that "the evidence the petitioner presented of disability at the hearing was not considered." The trial court questioned whether Nasibian or his representatives ever presented the argument to the hearing officer that Nasibian's disability affected his ability to live at his daughter's house: "Where does he present the issue to the Hearing Officer that, Okay, I committed fraud. You got me. But, you know, I'm disabled. . . . And it would be bad to move me, and I'm going to have to move if my Section 8 housing is terminated?" The court also noted that during the hearing, the hearing officer asked whether an application relating to a disability were at issue in the case, and HACLA said it was not while Nasibian and his representative said nothing. "It was your client's duty, or your client's representative's duty to say, He's disabled, and that is a mitigating fact because he can't be moved, or whatever." Nasibian's counsel acknowledged that the issue had not been raised, saying that Nasibian's representative at the administrative hearing had not been an attorney.

The court also asked Nasibian's counsel about the fact that his papers exceeded the page limitations the court imposed. "I asked the reporter to go back and verify that I told you the page limits were 15 pages. He did. He looked up his notes, and I did tell you the page limits were 15 pages and 10 for reply, and you said something by way of

acquiescence, Okay or Yes, that's fine, something affirmatively like that in response.” Nasibian’s counsel apologized, and asked the court to consider all of the issues in the brief. The court declined: “I’m not going to. The reason I’m not going to is because I addressed it with you. You agreed and then you violated the Rule of Court and my direction. So I’m not going to consider it.” The court then adopted the tentative ruling as its order, denying Nasibian’s petition.

Judgment was entered on March 2, 2015. Nasibian timely appealed.

### **STANDARD OF REVIEW**

Superior court review of an agency’s administrative decision under Code of Civil Procedure section 1094.5 (section 1094.5) is subject to different standards depending on the nature of the rights involved. Where the administrative decision substantially affects a “fundamental vested right,” the superior court conducts a limited trial de novo in which the court must examine the administrative record for errors of law and exercise its independent judgment upon the evidence. (*JKH Enterprises, Inc. v. Department of Industrial Relations* (2006) 142 Cal.App.4th 1046, 1057; *Bixby v. Pierno* (1971) 4 Cal.3d 130, 143-144; Code Civ. Proc., § 1094.5, subd. (c).) In reviewing decisions denying or terminating public assistance, such as the section 8 housing assistance at issue here, the superior court exercises its independent judgment. (*Ruth v. Kizer* (1992) 8 Cal.App.4th 380, 385; *Frink v. Prod* (1982) 31 Cal.3d 166, 178.)

“If the trial court exercised independent judgment because a fundamental vested right was involved, we review whether substantial evidence supports the trial court’s judgment.” (*Benetatos v. City of Los Angeles* (2015) 235 Cal.App.4th 1270, 1281.) In several parts of Nasibian’s brief, he asks us to review the sufficiency of the evidence before the hearing officer. But after the trial court has exercised its independent review, on appeal “we ‘need only review the record to determine whether the *trial court’s* findings are supported by substantial evidence.’ [Citations.]” (*Beckley v. Board of Administration of California Public Employees’ Retirement System* (2013) 222 Cal.App.4th 691, 697.)

Under the substantial evidence standard of review, we ““must resolve all conflicts in favor of the party prevailing in the superior court and must give that party the benefit of every reasonable inference in support of the judgment.” [Citation.] If more than one rational inference can be deduced from the facts, we may not replace the trial court’s conclusions with our own. [Citation.]” (*Tellis v. Contractors’ State License Bd.* (2000) 79 Cal.App.4th 153, 158.)

## **DISCUSSION**

### **A. The trial court’s limited ruling**

Nasibian argues that although “the trial judge objected to” Nasibian’s opening brief because it exceeded the page limitation requirement, the “procedural defects were waived by the trial judge.” “By discussing the portions of Petitioner’s brief that it claimed were not considered,” Nasibian argues, “the trial court exercised its inherent power to waive procedural defects under CCP 473 and CRC 1.1113(d).” He therefore asks us to review the entire ruling, rather than just the trial court’s finding that denial of the petition was warranted because Nasibian failed to carry his burden of proof in the first 15 pages of his brief and first 10 pages of the reply.

As HACLA points out, Nasibian has not suggested that the trial court’s ruling was erroneous or an abuse of discretion. We agree. Nasibian has therefore not presented any basis for reversal. On appeal, the appellant bears the burden to show not only that the trial court erred, but also that the error was prejudicial in that it resulted in a miscarriage of justice. (Cal. Const., art. VI, § 13; Code Civ. Proc., § 475; *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 800-802.) A miscarriage of justice occurs when the appellate court, “after an examination of the entire cause, including the evidence,” determines that it is “reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.” (*People v. Watson* (1956) 46 Cal.2d 818, 836; see also *Cassim, supra*, 33 Cal.4th at p. 800.) Nasibian has not made such an argument.

Even if Nasibian had argued that the court abused its discretion, such an argument would not be compelling. The trial court acted well within its discretion by rejecting the portions of the briefs that exceeded the page limitations it imposed. The trial court made



clear that it expected the parties' opening and opposition briefs to be no more than 15 pages, and the reply brief to be no more than 10 pages, which are the limitations imposed by California Rules of Court, rule 3.1113(d). Nasibian's opening brief was 28 pages, exclusive of the tables and appendix, and his reply was 12 pages. A memorandum that exceeds the page limits of the California Rules of Court "must be filed and considered in the same manner as a late-filed paper." (Cal. Rules of Court, rule 3.1113(g).) "If the court, in its discretion, refuses to consider a late filed paper, the minutes or order must so indicate." (*Id.*, rule 3.1300(d).) "A trial court has broad discretion under rule 3.1300(d) of the Rules of Court to refuse to consider papers served and filed beyond the deadline without a prior court order finding good cause for late submission." (*Bozzi v. Nordstrom, Inc.* (2010) 186 Cal.App.4th 755, 765.) Nasibian has not demonstrated that the trial court abused that broad discretion.

Nasibian argues that the trial court inherently "waived" its concerns about the oversized briefs because it considered Nasibian's remaining claims *arguendo*. The court did not waive its own ruling. The court was clear that to the extent certain arguments were in the parts of Nasibian's briefs that exceeded the page limitations, the court would consider those arguments only in the alternative. Trial courts have the inherent power, derived from statutes and the state Constitution, to control the proceedings before them. (*People v. Ward* (2009) 173 Cal.App.4th 1518, 1528; *Cottle v. Superior Court* (1992) 3 Cal.App.4th 1367, 1377.) The trial court was well within its discretion to consider only the first 15 pages of Nasibian's opening brief and first 10 pages of Nasibian's reply. Nasibian does not contend otherwise, and presents us with no argument that the trial court's ruling to this effect was error. This alone is sufficient to affirm the judgment below.

#### **B. The trial court's additional findings**

Even if we were to review the trial court's additional rulings in the context of Nasibian's arguments on appeal, we would find those rulings to be supported by substantial evidence. There was ample evidence that Nasibian did not provide accurate information to HACLA about who was living in the Lemp Avenue residence. Nasibian

received benefits intended to allow Armenuhi to live in his unit in a separate bedroom as Nasibian's in-home services provider. But when inspectors visited the house, they found three beds in Nasibian's bedroom while Armenuhi was ostensibly living at a different address. The photographs strongly suggest that many people were living in the unit, with women's and children's clothing and shoes in closets and throughout the house, personal care items for multiple adults and children in the house, and multiple beds in the bedrooms.

The trial court incorrectly found that Seda's driver's license listed the Lemp Avenue address, when in reality it listed the Oakwood Street address. Nonetheless, the court was justifiably skeptical of the evidence Nasibian presented to show that his family members lived elsewhere. The court held that the evidence suggesting that Nara rented the Oakwood Street residence to both Seda and Karapet was suspect because Nara had committed fraud when she executed the HACLA agreement stating under penalty of perjury that she and Nasibian were not related. Armenuhi's driver's license listed the Oakwood Street address as well, indicating that she allegedly lived there with her husband and their two small children. The court's findings that Nasibian failed to give accurate information to HACLA about who was living in the unit was supported by substantial evidence, and we will not disturb those findings on appeal.

Nasibian also argues that the trial court's conclusion that he committed fraud by renting from Nara is not supported by substantial evidence because Nasibian "provided evidence and testimony that he had no knowledge of the prohibition barring him from renting from a relative." Nasibian's support for this position is contradicted by other evidence, however. Nasibian argues that he "had no knowledge that he was not allowed to rent his daughter's house," but his HACLA voucher, which bears his signature, makes clear that the recipient "must not . . . [r]eceive housing choice voucher assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother." In addition, Nara represented on her housing contract that she was "not the parent, child, grandparent, grandchild, sister, or brother" of Nasibian, which was false. Nasibian presented no evidence to the contrary. Moreover, in his amended petition for writ of

mandate filed in the trial court, Nasibian said he called HACLA in 2011 and asked whether he could rent from a relative, and HACLA said no. Nasibian himself therefore told the trial court that he did have knowledge that he was not allowed to rent from Nara; he cannot now claim that he had no such knowledge.

Nasibian also argues that his limited understanding of English prevented him from forming an intent to defraud HACLA. He argues, “It cannot be assumed, given the Petitioner’s 20% knowledge of English, that he was fluent enough in English to understand the forms presented to him by the Housing Authority.” The trial court rejected this argument because Nasibian filled out all relevant forms in English, and he indicated that English was his primary language on his housing eligibility form. Although Nasibian suggests that he may not have understood the forms, he presented no evidence to support this argument. He did not testify, for example, that he did not understand the forms when he filled them out. Even if more than one rational inference could be drawn from these facts, under the substantial evidence standard of review we may not replace the trial court’s conclusions with our own. (*Sternberg v. California State Board of Pharmacy* (2015) 239 Cal.App.4th 1159, 1166.)

Nasibian also argues that “the trial court failed to consider substantial evidence of petitioner’s disabilities as a mitigating factor.” He points out that in determining whether to terminate section 8 assistance, “[t]he PHA may consider all relevant circumstances such as . . . mitigating circumstances related to the disability of a family member.” (24 C.F.R. § 982.552(c)(2)(i).) Additionally, “[i]f the family includes a person with disabilities, the PHA decision concerning [termination of benefits] is subject to consideration of reasonable accommodation . . . .” (*Id.*, § 982.552(c)(2)(iv).) Nasibian cites various cases and statutes, such as the United States Fair Housing Act, arguing that it is unlawful for any local housing authority to discriminate on the basis of a disability.

Nasibian points to the May 2005 doctor’s letter saying that Nasibian “has been having a severe mental problems [*sic*] due to his persecutory delusions, audio visual hallucinations[.]” The letter also states, “Any changes of his residence may be detrimental for him because he is familiar to [*sic*] his surroundings and gets paranoid

when the changes occur.” Nasibian argues, “It is possible that the Section 8 rent was needed to assist the landlord in making mortgage payments and that she would have lost the house without the Section 8 rent. However, the agency never requested this evidence from the Petitioner nor were any findings made concerning the effects on Petitioner’s disabilities if the Section 8 benefits were denied.”

Importantly, Nasibian never argued before the hearing officer that he was entitled to any sort of accommodation based on disability. Rather, the evidence of Nasibian’s schizophrenia, including the 2005 letter, was presented only to rebut the notation in the investigation report that Nasibian was “confrontational” when he first encountered investigators at his home. When issues of disability arose at the hearing, the hearing officer specifically asked whether a disability accommodation was at issue. HACLA representatives said no, while Nasibian and his representative said nothing. The trial court noted that Nasibian never asserted this argument below. The trial court therefore could have rested its ruling on a finding that any claim of disability accommodation had been forfeited. “‘Where a party by his conduct induces the commission of error, he is estopped from asserting it as a ground for reversal’ on appeal. (9 Witkin, Cal. Procedure, *supra*, Appeal, § 383, p. 434, italics omitted.)” (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 403.)

The trial court nonetheless considered the merits of this argument, and held that Nasibian failed to demonstrate that his disability required him to receive housing benefits while living at the Lemp Avenue residence owned by Nara: “Petitioner failed to present evidence, and does not explain, how renting from his daughter would be a necessary accommodation for his disability.” The court also said, “Petitioner’s disability would justify the live-in presence of Armenuhi, but it is not a mitigating circumstance for the unauthorized occupants of the unit, renting from a family member, fraud, and the failure to supply complete and accurate information.”

The trial court’s conclusions are supported by substantial evidence. The trial court noted that two of the three letters relating to Nasibian’s health were “grossly out of date.” The letter stating that changing residences would be stressful on Nasibian was from May

2005, and Nasibian moved into the Lemp Avenue residence in 2006, demonstrating that changing residences was not so stressful that Nasibian could not successfully move. Nasibian also presented no evidence that Nara would refuse to allow Nasibian to live at the Lemp Avenue residence if his benefits were terminated. Given the forfeiture of the issue before the hearing officer and the lack of evidence that Nasibian needed any reasonable accommodation relating specifically to benefits for the Lemp Avenue residence, the trial court's findings were supported by the record.

“Where findings of fact are challenged on a civil appeal, we are bound by the “elementary, but often overlooked principle of law, that . . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,” to support the findings below.” (*Cahill v. San Diego Gas & Elec. Co.* (2011) 194 Cal.App.4th 939, 957.) Here, substantial evidence supports the trial court's findings, and therefore we will not disturb those findings on appeal.

#### **DISPOSITION**

The judgment is affirmed. HACLA shall recover its costs on appeal.

#### **NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.